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* IN THE HIGH COURT OF DELHI

\+ OMP No. 281 / 2004

% Date of decision : 13.02.2006

M/S. P.K. GADODIA TRADERS ... ... PEITTIONER
through : Mr. Kuldeep Pablay,
Advocate.

- VERSUS -

PARAM SHUBHAM VANIJYA LTD. & ORS. ... ... RESPONDENTS
through : Mr. T.K. Ganju with
Mr. A.K. Thakur, Advocates
for Respondent No. 1.
None for Respondent No. 2.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

SANJAY KISHAN KAUL, J. (ORAL)

(1)The petitioner has filed the present objections under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter to be referred to as, 'the said Act') for setting aside the Award dated 28.05.2004 passed on a claim filed by respondent No. 1.

Signature Not Verified
Digitally Signed By:ANULYA
Certify that the digital file and physical file have been compared and the digital data is as per the physical file and no page is missing.

(2)The petitioner is a purchaser of paper. Respondent No. 1 is a wholesaler appointed by respondent No. 2. Respondent No. 2 is the manufacturer of paper.

(3)The disputes between the parties relate to the paper supplied to the petitioner and not paid for.

(4)Respondent No. 1 invoked the arbitration clause arising from both the petitioner and respondent No. 1 being Members of the Paper Merchants Association, which has its rules and clause XXX of the Rules provides for arbitration. Respondent No. 2 also invoked the arbitration against the petitioner for the same claim arising from a printed clause of arbitration on the back of the invoice for supply of the material. This arbitration was referred to Justice N.N. Goswami (Retd.) who came to the conclusion that the clause of arbitration would only bind the seller (respondent No. 2) and the wholesaler (respondent No. 1) as it was not signed by the petitioner. The petitioner inter alia had taken a stand before the said Arbitrator that there was no privity of contract between the petitioner and respondent No. 2 herein in view of the fact that all the transactions were through respondent No. 1 and the arbitration proceedings were pending between the petitioner and respondent No. 1.

(5)In the arbitration proceedings in question in the present case, the Arbitrator specifically posed a question to the petitioner herein as to whether the petitioner was willing to pay to respondent No. 2 herein instead of respondent No. 1 as respondent No. 2 is the manufacturer. The answer to that was evasive. The Arbitrator came to the conclusion that there was an arbitration agreement between the parties and the goods were supplied through the wholesaler / agent being respondent No. 1 herein who had to be re-compensated with the cost of purchase apart from interest @ 12% p.a. The Arbitrator also took the precaution of calling for an affidavit of respondent No. 2 to the effect that respondent No. 1 was entitled to recover the amount from the petitioner. This was done only so that the petitioner did not face the multiplicity of proceedings in respect of the same cause of action.

(6)Learned counsel for the petitioner was specifically asked as to under which clause of Section 34 of the said Act, would the objections fall. Learned counsel has referred to Section 34(2)(a)(iv) to contend that the dispute was not contemplated for arbitration. This plea is raised on the basis that there was no privity of contract between the petitioner and respondent No. 1,

but the privity of contract was between the petitioner and respondent No. 2 as respondent No. 2 was the manufacturer and supplier of the paper.

(7)Learned counsel for respondent No. 1 has drawn the attention of this Court to the stand of the petitioner in the proceedings before Justice N.N. Goswami (Retd.) wherein the petitioner pleaded as under:

> "4. The Claimant supplied the material / goods through M/s. Param Shubham Vanijaya Ltd., the wholesaler, with whom the Claimant had contract / agreement and the payment was being made under the instructions from the wholesaler and with intimation to them.
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> 7. Since the supply was made through the wholesaler M/s. Param Shubham Vaniyaya Ltd., the demand was to be made only through the wholesaler. Here the Claimant admits that they also asked their agent PSVL. But since the agent M/s. Param Shubham Vanijya Ltd. had gone for arbitration proceedings and the same were pending before Shri Jagannath Gupta, Sole Arbitrator, there was no reason for the Respondent to pay to the Claimant herein directly."

(8)A reading of the aforesaid leaves no manner of doubt that the petitioner's own contention was that the transaction took place only with respondent No. 1 and the payments were to be made to respondent No. 1. Now, the reverse position is sought to be taken. The petitioner does not and cannot dispute that the goods have been received and payment has to be made. The payment had to be made either to respondent No. 1 or to

respondent No. 2. The case of the petitioner was that the payment had to be made to respondent No. 1. The dispute between the petitioner and respondent No. 1 was referred to arbitration in pursuance to both the parties being Members of the Paper Merchants Association. The plea, thus, being sought to be raised by the petitioner is palpably false and in complete contradiction to the plea raised in the second arbitration proceedings.

(9)In view of the aforesaid, I am of the considered view that the objections of the petitioner really do not even fall within the parameters of Section 34 of the said Act as enunciated by the Supreme Court in Oil and Natural Gas Corporation Ltd. v. Saw Pipes Ltd., AIR 2003 SC 2629. The objections being without merit are dismissed with costs quantified at Rs.5,000/-.

+ IA No. 4505/2005

(10)This application filed by respondent No. 1 under Section 9 of the said Act for securing the amount in dispute does not survive for consideration in view of the objections having been dismissed.

(11)The application stands disposed of.

February 13, 2006
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SANJAY KISHAN KAUL, J.